

HORIZON EXPLORATION CO.

IBLA 83-53

Decided April 7, 1983

Appeal from decision of Alaska State Office, Bureau of Land Management, dismissing a protest against the declaration that certain unpatented mining claims were abandoned and void. AA 50250.

Affirmed.

1. Rules of Practice: Protests

Under the Department's Rules of Practice, 43 CFR 4.450-2, a protest is any objection to an action proposed to be taken. A protest may not be used in a case where no appeal against a Bureau of Land Management decision was taken during the period allowed for such appeal.

APPEARANCES: Steve M. Lowell, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On September 16, 1981, Horizon Exploration Company submitted to the Alaska State Office, Bureau of Land Management (BLM), copies of notices of location for the High Lakes Nos. 1 through 10 lode mining claims, which had been located August 1 and 2, 1981. The location notices were submitted in compliance with section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). BLM assigned serial numbers AA 44908 through AA 44917 to these location notices, notwithstanding the notices had been submitted without the required service fee of \$5 per claim. 43 CFR 3833.1-2(d). That regulation in effect at the time of filing of these notices stated that a location notice not accompanied by the service fee shall not be accepted, but will be returned to the locator. 1/

By decision of May 10, 1982, BLM rejected the location notices and declared the claims abandoned and void because the notices were not accompanied by the required service fees, nor were such fees paid within 90 days

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1/ The regulation governing the filing fee for recordation of mining claim location notices was subsequently revised to provide that a certificate of location submitted without the nonrefundable fee of \$5 will be noted by BLM as recorded on the date received, if the claimant, upon notification by the authorized officer of the deficiency, remits payment within 30 days of receipt of the notice. 43 CFR 3833.1-3, 47 FR 56,305 (Dec. 15, 1982).

after location of the mining claims, as prescribed by FLPMA. Right of appeal was allowed, but as no appeal was taken, BLM closed the case June 14, 1982.

It appears that Steve M. Lowell of Horizon Exploration Company corresponded with a Senator by a letter dated May 18, 1982, complaining of the "cavalier treatment" which BLM had given Horizon Exploration Company relative to the mining claim notices.

The Senator, by a letter dated June 21, 1982, referred the matter to the Director, BLM, who advised the Senator that under existing regulations the situation was not amenable to any administrative means for correction, but that the Lowell letter of May 18, 1982, addressed to the Senator, would be treated as a protest inasmuch as the period for appealing the May 10, 1982, decision had elapsed. It was suggested that treating the Lowell letter as a protest would serve to keep the issue of proper recordation of the claims alive.

Copies of the Lowell letter of May 18, 1982, the Senator's letter of June 21, 1982, and the reply of the Director, BLM, on July 19, 1982, were received by the Alaska State Office on August 16, 1982, and given serial identification AA 50250. By a letter dated August 20, 1982, Lowell amplified his "protest" to say that the deficiency of the service fee payment did not warrant the charge of abandonment, especially as he had filed the documents required by 43 CFR 3833.4(a) in a timely manner, and that BLM probably could, within its latitude, utilize 43 CFR 1821.2-2(g).

Thereafter, by decision of September 7, 1982, BLM dismissed the protest. Lowell appealed.

[1] The pertinent regulation, 43 CFR 4.450-2, provides as follows:

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau [of Land Management] will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

As the protest of this appellant was not against any action proposed to be taken, BLM properly dismissed the protest. A protest may not be substituted for an appeal which was not timely filed. See DNA-People's Legal Services, 49 IBLA 307, 311 (1980). A protest is properly dismissed where the issues involved are moot. Maidee B. Frank, A-27594 (Nov. 17, 1958).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

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Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge.

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R. W. Mullen  
Administrative Judge

